IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 28 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RADHIBEN WD/O.CHETIA MAVJI KATARA & 3 - Appellant(s)
Versus
SURTAN VESTA DAMOR & 1 - Defendant(s)

==========

Appearance :
MR DF AMIN for Appellant(s) : 1 - 2, 2.2.1, 2.2.2, 2.2.3,2.2.4 - 4.
MR RM VIN for Defendant(s) : 1,
MR HUKUM SINGH AGP for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/03/2007

ORAL JUDGMENT

1. Mr.D.F. Amin, learned counsel for the appellants, Mr.R.M. Vin, learned counsel for the respondent No.1 and Mr.Hukum Singh, learned Assistant Government Pleader for the respondent No.2 – State.
2. Short facts necessary for disposal of the present appeal are that one Chetiabhai Mavjibhai Katara - husband of the plaintiff No.1 and father of the plaintiff Nos.2 to 4 was the owner of the suit land bearing Survey No.51 admeasuring 13 Acres and 2 Gunthas and was cultivating the same.
3. The said Chetiabhai Mavjibhai Katara expired in the year 1951 and thereafter, the plaintiffs became owners of the suit land. The plaintiffs say that their names were recorded in the revenue records vide Mutation Entry No.35. The defendant No.1, who were residing at village Varoda, somehow or other, managed an entry in his favour that he had purchased the property by paying a consideration of Rs.300=00 (Rupees Three Hundred only) and the sale was oral. After realising about the entry, the plaintiffs filed a suit for declaration that the said entry be held to be invalid and not affecting the rights of the plaintiffs. The defendant No.1 appeared before the Court

and raised number of disputes, his submission was that the entry was right and justified, he had acquired ownership rights under oral sale and that if the oral sale was bad, he has become owner of the property being in possession of the property since after 1951. The question of jurisdiction of the trial court was also raised. The learned trial court, after recording evidence and hearing the parties, dismissed the suit holding that the Civil Court has no jurisdiction, the appeal was also dismissed, therefore, the plaintiffs are before this Court.

4. Mr.Amin, learned counsel for the appellants submits that in the present set of circumstances, the appellants – plaintiffs were entitled to maintain a suit, because, the entry was contrary to law and could not be made even under the tenancy laws. His submission is that the sale of the property worth more than Rs.100=00 cannot be made except by registered document and if oral sale of tangible immovable property worth more than Rs.100=00 (Rupees One Hundred only) is made, then, such transaction would not be admissible, even if it is written but not registered, in view of sec.49 of the Indian Registration Act. His submission is that though the revenue courts have absolute jurisdiction in the matters

of Mutation Entry, but if the orders passed by the revenue authorities are patently without jurisdiction, then, the civil court can correct their wrong.

5. Mr.R.M. Vin, learned counsel for the respondent No.1 submits that in relation to an entry in the revenue records, civil court would have no jurisdiction even if the entry is wrong, the affected person must approach the revenue authorities for correction of the Mutation Entry.

6. The appeal has been admitted for hearing the parties on the following substantial questions of law;

> "(i) In view of the fact that the entry No.64 dtd.12/6/1953 passed on the basis of oral sale, whether the Courts below have erred in holding that the said entry is not illegal?
>
> (ii) In view of the fact that the entry No.64 was passed on the basis of oral sale, whether the Courts below have erred in holding that the civil court has no jurisdiction to decide the legality or correctness of the entry passed in the revenue record?
>
> (iii) Whether the courts below have erred in considering document Mark 14/1 and further erred in not exhibiting the said document?"

7. All three questions framed by this Court at the time of admission can conveniently be disposed of simultaneously. Sec.17 of the Indian Registration Act provides that if some tangible immovable property worth less than Rs.100=00 (Rupees One Hundred only) is sold and delivery of possession is also effected, then, such sale, on delivery of possession, would be complete. The law provides that if any tangible immovable property worth Rs.100=00 (Rupees One Hundred only) or more is sought to be transferred or alienated, then, such transfer is required on proper stamp and is required to be registered also. Consequence of non-registration is shown under sec.49 of the Indian Registration Act. Sec.49 clearly provides that in a case where document, which under the law, was required to be registered, if is not registered, then, the same would not be admitted in evidence, except for collateral purpose. If a document is not admissible in evidence and cannot be relied upon, nor does convey title in the law, then, on the basis of such document, an entry could not be made in the revenue record. In the revenue record, entry can be made only if some legal document conveys title in favour of the purchaser or, person aspiring for entry in his favour has

obtained right under some revenue laws. In the present case, on the basis of an unregistered sale, which admittedly was oral one, an entry in favour of the defendant could not be made.

8. Civil Court ordinarily would not interfere in the matters where courts of limited jurisdiction or exclusive jurisdiction have exercised their authority. A civil court would interfere in a matter, if it is held by the Court that provisions of law have been violated to their hilt**,** the authority / officer had no jurisdiction to do something or principles of natural justice have been violated. The moment the Court comes to the conclusion that act or action of an authority is bad and runs contrary to law, then, the civil court shall immediately assume the jurisdiction and correct the wrong committed by the authorities. The courts below, in the considered opinion of this Court were unjustified in holding that the Civil Court had no jurisdiction in the matter. The concept of jurisdiction is not based upon the plain reading of provisions of law, because, it is trite to say that a Civil Court is always jealous of a provision which ousts its jurisdiction. A Civil Court has to be too cautious and careful in understanding and appreciating the provisions

which say that the civil court has no jurisdiction. All the conditions to denude the Civil Court of its powers must be complied with. Moment a civil court holds that any other court of exclusive jurisdiction has violated the provisions of law or has not observed the law or has violated the principles of natural justice, then it is bound to exercise its jurisdiction.

9. In the opinion of this Court, entry made in favour of the respondents could not be made by any person whatsoever authority he had. The entry was patently without jurisdiction, it deserves to and is accordingly set aside.

10. While setting aside of entry, I am not required to decide the question of possession, adverse possession, right of the plaintiffs to acquire possession or right of the defendants to remain in possession. Such questions were not required to be decided by the subordinate courts, because, the dispute was in narrow compass that whether the entry could be set aside by the civil court. I set aside all other findings including the possession, adverse possession, etc. I confine my judgment to the simple point that the entry made in the year 1951 bearing Entry No.64 dtd.12/6/1953 (Ex.23) is bad and the

said entry is set aside.

11. The appeal is allowed. The judgment and decree passed by the two courts below are set aside. The suit is decreed to the extent indicated above. Let a decree be framed accordingly. No costs.

(R.S. GARG, J.)

rafik